



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Geo. M. Shoppard
Comptroller of Public Accounts
Austin, Texas

Dear Mr. Shoppard:

Opinion No. O-3312

Re: Authority of the Comptroller of Public Accounts to transfer the balance carried in the Treasurer's Suspense Account known as the "Mary McManara Suspense Account."

Your letter requesting an opinion from this department upon the above subject-matter, accompanied by a letter prepared by Mr. W. C. Stallings, Auditor, is before us. Mr. Stallings' letter is as follows:

"At your request, I have endeavored to obtain the history of the items held in the Departmental Suspense under the classification of 'Sundry Suspense' as carried by the Department Cashier. I am attaching a schedule setting out the detail in this account showing a balance of \$213.87 as carried by the department bookkeeper and in the Suspense balance of the State Treasurer.

"I have talked to various members of the department who might have some idea as to the origination of these items and why they were deposited to this suspense account.

"The first item, according to Mr. J. W. Byrne, was in payment of Motor Fuel Tax by the Auto Supply Company of Laredo, Texas, in the amount of \$28.85. According to the information gathered this was a refundable item, but for some reason the act of refunding this to the tax-payer was never executed. The ledger sheet carried by the Cashier shows that this

Honorable Geo. M. Sheppard - page 2

item was deposited to Suspense April 25, 1931.

"The second item is listed under the name of Dan Moody in the amount of \$5.00, and according to the Cashier's suspense ledger this item was deposited to Comptroller's Suspense account September 30, 1931. This item, according to information furnished by Mr. C. D. Watts and Mr. Jack Walston, was an anonymous payment received by the governor's office at the time the Honorable Dan Moody was Governor of Texas. The \$5.00 was deposited with the Comptroller for disbursement to funds, and the Comptroller had no way of determining the fund to which this amount should be deposited.

"The third item in this account, amounting to \$382.26, is listed as 'unknown.' The records in the Cashier's Division show that this covers four deposits to the suspense account as shown on the attached schedule. The information gathered from members of the department who were employed before and at the time Mr. Sheppard took office is that these are fee items collected under the Houston Terrell administration.

"The total of these items amounts to \$916.11 and is carried thusly on the cashier's control sheets as 'Mary McNamara Suspense.' Mr. Watts tells me that in 1937 the Assistant State Auditor in making the annual audit of the Cashier's office recommended a credit adjustment to this account of \$2.24, which reduced the account balance \$2.24 and since that time it has been carried as \$913.87.

"Mr. Watts informs me that the items composing this account were carried in a make-shift suspense account before any law was passed by the legislature governing suspense items. It was deposited under the classification of 'Houston Terrell Special' upon the approval of Mr. Terrell, and Mr. Sheppard inherited it in that fashion when he took office.

"Within the past few years the State Auditor has recommended that this account be cleared to

Honorable Geo. H. Sheppard - page 3

the General Fund. Special effort was made by the Assistant State Auditors in their recently completed investigation of this department to have this account cleared to the General Fund. On February 10th of this year a conference was held between Mr. Garland Barcus, Assistant State Auditor, Mr. Bob Calvert, Department Statistician, and myself, and it was agreed the \$213.87 would be the proper amount to clear."

In Opinion No. O-948, addressed to Honorable Tom C. King, State Auditor, this department, construing Article 4364, Vernon's Annotated Civil Statutes, said:

"The reading of the above quoted Article clearly indicates that the procedure for final payment into the State Treasury is by the issuance of a deposit warrant. Such deposit warrant is issued to the particular fund to which the money goes. It is true, then, that until the fund to which the money should go is determined the deposit warrant to that fund cannot be issued for such money. For this reason, it is our opinion that in a case where money is paid to one of the departments of the State, and there is a question as to which particular fund said money should go, the same may properly be paid into the Suspense Fund because said money cannot be placed into the proper fund until a deposit warrant for such money is drawn. Only then is the money paid into the Treasury. While the particular destination of the fund is in question, even though there is no question as to the State's right to the money, we feel that the money comes within the category of 'money which is awaiting the time when it can finally be taken into the Treasury' as set out in Article 4368. You are, therefore, advised that in cases where there is an actual doubt as to the particular fund to which a money should go

Honorable Geo. M. Sheppard - page 4

said money may properly be placed in the
Suspense Fund by the head of a department."

What we said there rules your case.

Mr. Stallings' analysis of the Mary McNamara Suspense Account does not show that the fund in that account belongs to the State, but on the contrary, tends to show that it belongs to others. In Opinion No. 0-8844, addressed to Honorable Jesse James, State Treasurer, we made the same quotation as that above, and added:

"In view of the rule there announced, it is the opinion of this Department the items mentioned by you whose source and status as State property are unknown, must remain in the Suspense Account until in some way the proper status and disposition thereof are ordered by a court of competent jurisdiction, or by legislative act." (Emphasis supplied)

Since it has not been determined that the Mary McNamara Suspense Account belongs to the State, it cannot be covered into the State Treasury. Moreover, even though it were undisputed that the Fund does belong to the State, unless it has been determined further as to which fund the same should be credited, it may not be deposited in the State Treasury upon the Comptroller's warrant.

Trusting that what we have said sufficiently answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Osie Spear
Assistant

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